



Solar Power and the Williamson Act

Abstract

Due to the combined state policy objectives contained in the Renewables Portfolio Standard Program, and the California Global Warming Solutions Act of 2006, as well as tax and financing incentives, the siting of large scale solar projects on land under contract in the California Land Conservation Act (Williamson Act) Program has become an issue for many local governments.

Williamson Act Overview

The purpose of the Williamson Act (Government Code Section 51200 et seq.) is to assure sufficient food supplies, to discourage the premature and unnecessary conversion of agricultural lands, to discourage discontinuous urban development patterns, and to preserve open space. As a voluntary program, the Act currently has 16.6 million acres, nearly one-third of all of the private land in the state, under contract. Contracts are overwhelmingly with counties with only a few cities participating in the program. All of the contracts are enforceable restrictions on land and are binding on successors to both landowners and the local government. Landowners enter into agreements with cities and counties to restrict use of their land in return for lower tax assessments, based on the agricultural use versus the potential market value of the property. Article XIII, Section 8 of the California State Constitution allows county assessors to assess Williamson Act contracted land using a formula established by the State Board of Equalization and the Revenue and Taxation Code.

A newer addition to the Williamson Act is a provision for Farmland Security Zones (FSZ). Also voluntary, enrollment in an FSZ is for a 20-year automatically renewed contract, providing greater protections from urbanization pressure. FSZs also provide landowners with greater property tax reductions than traditional Williamson Act contracts. Twenty five counties have adopted the FSZ program with a total of 800,000 acres now contracted. The process to cancel a FSZ contract is also much more stringent than a Williamson Act contract. In addition to the requirement that the local government approve a cancellation, the Department of Conservation (Department) must also approve the cancellation.

The Williamson Act charges the Department with overall oversight of the Williamson Act, and charges local governments with the primary responsibility for implementation of the Act. Under the Act, cities and counties may establish agricultural preserves which are designated areas consisting of one or more parcels totaling at least 100 acres, and devoted to agricultural, open space or recreational use. Once a preserve is established, a city or county may enter into contracts with land owners within the preserve to restrict the use of the land. Some Williamson Act-based restrictions apply to all parcels in an agricultural preserve, so even if a specific parcel is not under contract, its location within an agricultural preserve can have an effect on the siting of a solar project.

The Act grants cities and counties broad discretion to adopt local rules defining allowable (compatible) uses on all parcels within agricultural preserves, and to draft the terms of individual Williamson Act contracts.

Solar Facilities on Williamson Act Land

There are three important concepts to consider when addressing Williamson Act issues, the first being that Williamson Act issues tend to be very fact specific, so any change in the fact pattern may change the

possible outcome of a situation. The second concept to consider is that local rules (and the language contained in any specific contract at issue) play an important role in determining what is allowed under the local Williamson Act program. While Government Code §§51200 - §§ 51297.5 sets the minimum legal requirements of the Williamson Act, local rules may add requirements or may establish definitions for terms that are not defined in the Act. For example, the term “electric facilities” is not defined in the Williamson Act and as a consequence some counties have chosen to narrowly restrict its definition to electrical transmission lines and related transmission improvements. Other counties have adopted a broader definition that includes the construction of electrical generation facilities, while many counties are silent on the issue and have the option of addressing the issue as it arises. The third consideration is the importance of cities and counties establishing a strong, defensible written record that adequately addresses each of the Act’s required findings necessary to justify a specific Williamson Act decision. This third consideration is especially important when considering the liberal enforcement clause found in Government Code section 51251 which extends legal standing to sue to not only the county, city or landowner but also neighbors and any other Williamson Act contracted landowner in the same county or city.

The Williamson Act does not specifically address the placement of solar power generation facilities on land subject to it. However, depending on the specific characteristics of a particular facility, and the wishes of the landowner, there are four ways in which a solar power generation facility may be located on land subject to the Williamson Act. First, locating a solar power generation facility on land within an agricultural preserve may be allowed as a compatible use depending on the local rules governing compatibility. Second, the landowner may provide notice of non-renewal to the city or county administering the Williamson Act contract on the land, and eventually remove the Williamson Act’s restrictions over use of the land. Third, the contract may be “cancelled” pursuant to required statutory processes under appropriate circumstances. Here, in almost all cases, the landowner would be responsible for paying a cancellation fee. Fourth, a public agency with the power of eminent domain may acquire land subject to a Williamson Act contract (through eminent domain or in-lieu of eminent domain), thereby “nullifying” the contract and rendering the land free from the contract’s restrictions.

1. Compatibility

Certain non-agricultural uses, including solar power generation, may be compatible with an underlying agricultural use. The Williamson Act provides three general circumstances when a solar power generation facility may be found compatible. First, a solar power generation facility may be a compatible use as an “electrical facility” when located on non-contracted land within an agricultural preserve.

Second, a solar power generation facility on contracted land may be a compatible use if it meets the “principles of compatibility” as set forth in Government Code Section 51238.1(a). Whether a proposed solar installation is compatible with the underlying agricultural use of the land depends almost entirely on the specific circumstances. The statutory test directs cities and counties to look at the degree to which the proposed project would significantly interfere with the underlying agricultural operation. If a proposed solar project would displace a very small percentage of the overall agricultural operation then the local jurisdiction could find that the solar panels would not reach the level of significant displacement and therefore be an allowed use.

Finally, under specific circumstances a solar power generation facility may be approved by a city or county even if it is inconsistent with the principles of compatibility if: (1) the proposed site is located on non-prime land; (2) the proposed site is approved pursuant to a conditional use permit; and (3) the following four findings are made, based on substantial evidence in the record:

- 1) The conditional use permit requires mitigation or avoidance of onsite and offsite impacts to agricultural operations.

- 2) The productive capability of the subject land has been considered as well as the extent to which the solar power generation facility may displace or impair agricultural operations.
- 3) The solar power generation facility is consistent with the purposes of the Williamson Act, to preserve agricultural and open-space land, or supports the continuation of agricultural uses, or the use or conservation of natural resources, on the contracted parcel or on other parcels in the agricultural preserve.
- 4) The solar power generation facility does not include a residential subdivision.

There are a host of factors for a county or city to weigh and consider in making the above required findings. These include but are not limited to the availability of irrigation water, size of the solar power generation facility, size of the contracted parcel, slope, placement and location of solar panels, and types of mitigation and avoidance offered.

Because each situation is so fact specific, the Department stands ready to assist cities and counties in performing the required compatibility analysis.

2. Non-renewal

Williamson Act contracts may be administratively or unilaterally “non-renewed” either by the landowner or the city or county. Non-renewal of a Williamson Act contract starts a ten-year process toward the contract’s expiration, during which property taxes will be returned to their full amount. However, the land use restrictions are still applicable during this period, while the property taxes increase. Because of the extended time frame of non-renewal and the relatively rapid necessity to develop renewable energy sources, it is not likely that solar energy project developers will wait for the expiration of the contract through non-renewal as a method of voiding the land restrictions. However, on large scale or phased projects that will take more than 10 years to develop, the project developer could non-renew any contracted lands that will not be required in the first 10 years (or 20 years in counties that have 20-year minimum terms), and thus avoid having to pay a cancellation fee on those lands.

3. Cancellation

As an alternative to non-renewal, the landowner may seek to immediately cancel the Williamson Act contract. The Williamson Act allows contracts to be cancelled under certain circumstances. Cancellation is subject to discretionary approval by the local agency having jurisdiction over the contract. Landowners who cancel Williamson Act contracts are required to pay a fee of 12.5 percent of the unrestricted value of the property to the State.ⁱ²³

The grounds for cancellation are codified in Government Code section 51282, which allows for cancellation of a Williamson Act contract only when cancellation: (1) is consistent with the purposes of the Act; or (2) is in the public interest. Some jurisdictions require both findings.

Cancellation is consistent with the purposes of the Williamson Act when a landowner can show to the satisfaction of the city or county that: (1) notice of non-renewal has been served; (2) cancellation would not likely lead to a domino effect where nearby agricultural lands would be removed from production; (3)

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³The Williamson Act does provide for the waiver of cancellation fees in certain narrowly defined circumstances. In order to grant a waiver, the county or city and the Secretary of the California Natural Resources Agency must find that: (1) the cancellation is caused by an involuntary transfer or change in the use which may be made of the land; and (2) the land is not suitable for a purpose which produces a greater economic return to the owner. It is unlikely cancellation for a solar power generation facility can meet these requirements.

cancellation is consistent with the local general plan; (4) cancellation would not result in scattered (or “leapfrog”) urban development; and (5) no other suitable land is available for the project.

Alternatively, a landowner can cancel if it can be demonstrated to the satisfaction of the city or county that: (1) the benefits to the State, as a whole, substantially outweigh the State’s interest in preserving that land for agricultural production; and (2) either no other suitable non-contracted land is available nearby, or the development of the contracted land would result in more contiguous urban development than development of nearby non-contracted land. Because it is the policy of the State to require that a portion of its energy is generated using renewable sources it is logical to expect that a local jurisdiction could find that the siting of a solar energy project makes the public interest findings required for cancellation of a Williamson Act contract. However, there are many factors in determining whether the production of solar energy is of a higher public interest than the pre-existing agricultural use of the land. Some factors may include the quality of the soil, current agricultural production and the availability of reliable irrigation water.

4. Eminent Domain

A final avenue to remove the restrictions of a Williamson Act contract and provide a path for a solar power generation facility is through condemnation. A public agency or person with the authority to condemn property may acquire the land by or in lieu of eminent domain, thereby rendering the Williamson Act contract void. There are no cancellation fees when a contract is voided by or in lieu of eminent domain.

Conclusion

There are many ways in which a solar power generation facility may be built within an agricultural preserve or on land restricted by a Williamson Act contract. In summary: (1) A city or county may determine under certain factual patterns that a solar power generation facility is a compatible use on land restricted by a Williamson Act contract; (2) A city or county, or the landowner, may choose to not renew the contract; (3) A city or county may find it is either consistent with the Williamson Act or in the public interest to cancel the contract for the solar power generation facility and immediately remove the land’s restrictions; or (4) A public agency with the power to condemn property may acquire the contracted land by, or in lieu of, eminent domain and render the Williamson Act contract void.

One last consideration is that agricultural technology advances rapidly over time, and land that may be desirable for solar energy production today may one day be needed for the production of food. It is important that proposals for the conversion of agricultural land to solar energy projects include a detailed site restoration plan detailing how the project proponents will restore the land back to its current condition if and when the solar panels are removed.

For additional information, contact the Department of Conservation’s Division of Land Resource Protection at (916) 324-0850.

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